



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2012-0950; FRL-9930-53-Region 1]**

**Approval and Promulgation of Air Quality Implementation Plans;**

**New Hampshire; Infrastructure State Implementation Plan**

**Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) submissions from New Hampshire regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2008 lead (Pb), 2008 8-hr ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), and 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). EPA is also proposing to convert conditional approvals for several infrastructure requirements for the 1997 and 2006 fine particle (PM<sub>2.5</sub>) NAAQS to full approval under the CAA.

Furthermore, we are proposing to update the classifications for several of New Hampshire's air quality control regions for ozone and sulfur dioxide based on recent air quality monitoring data collected by the state, and to grant the state's request for an exemption from the infrastructure SIP contingency plan obligation for ozone. Last, we are proposing to conditionally approve certain elements of New Hampshire's submittal relating to prevention of significant deterioration requirements.

The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by the appropriate Docket ID number as indicated in the instructions section below, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).
3. Fax: (617) 918-0047.

4. Mail: Anne Arnold, Manager, Air Quality Planning Unit, Air Programs Branch, Mail Code OEP05-2, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912.

5. Hand Delivery: Anne Arnold, Manager, Air Quality Planning Unit, Air Programs Branch, Mail Code OEP05-2, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID. EPA-R01-OAR-2012-0950. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system,

which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office

Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046; [mcconnell.robert@epa.gov](mailto:mcconnell.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background of these State Implementation Plan (SIP) submissions?
  - A. What New Hampshire SIP submissions does this rulemaking address?
  - B. Why did the state make these SIP submissions?
  - C. What is the scope of this rulemaking?
- III. What guidance is EPA using to evaluate these SIP submissions?
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- A. Section 110(a)(2)(A) - Emission limits and other control measures.
- B. Section 110(a)(2)(B) - Ambient air quality monitoring/data system.
- C. Section 110(a)(2)(C) - Program for enforcement of control measures and for construction or modification of stationary sources.
  - i. Sub-element 1: Enforcement of SIP measures.
  - ii. Sub-element 2: Prevention of Significant Deterioration (PSD) program for major sources and major modifications.
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- D. Section 110(a)(2)(D) - Interstate transport.
  - i. Sub-element 1: Section 110(a)(2)(D)(i)(I) - Contribute to nonattainment (prong 1) and interfere with maintenance of the NAAQS (prong 2).
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  - iii. Sub-element 3: Section 110(a)(2)(D)(i)(II) - Visibility protection (prong 4).
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v. Sub-element 5: Section 110(a)(2)(D)(ii) -  
International pollution abatement.

E. Section 110(a)(2)(E) - Adequate resources.

F. Section 110(a)(2)(F) - Stationary source monitoring  
system.

G. Section 110(a)(2)(G) - Emergency powers.

H. Section 110(a)(2)(H) - Future SIP revisions.

I. Section 110(a)(2)(I) - Nonattainment area plan or plan  
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J. Section 110(a)(2)(J) - Consultation with government  
officials; public notifications; PSD; visibility  
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iii. Sub-element 3: PSD.

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K. Section 110(a)(2)(K) - Air quality modeling/data.

L. Section 110(a)(2)(L) - Permitting fees.

M. Section 110(a)(2)(M) - Consultation/participation by  
affected local entities.

V. What action is EPA taking?

VI. Incorporation by Reference.

VII. Statutory and Executive Order Reviews.

**I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.



8. Make sure to submit your comments by the comment period deadline identified.

## **II. What is the background of these State Implementation Plan (SIP) submissions?**

A. What New Hampshire SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the New Hampshire Department of Environmental Services (NH-DES). The state submitted its infrastructure SIP for each NAAQS on the following dates: 2008 Pb - November 7, 2011; 2008 ozone - December 31, 2012; 2010 NO<sub>2</sub> - January 28, 2013; and, 2010 SO<sub>2</sub> - September 13, 2013.

This rulemaking also addresses certain infrastructure SIP elements for the 1997 and 2006 fine particle (PM<sub>2.5</sub>)<sup>1</sup> NAAQS for which EPA previously issued a conditional approval. See 77 FR 63228, October 16, 2012. The state submitted these infrastructure SIPs on April 3, 2008, and September 18, 2009, respectively.

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<sup>1</sup> PM<sub>2.5</sub> refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as "fine" particles.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997 and 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 PM<sub>2.5</sub> NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)" (2009 Memo), followed by the October 14, 2011, "Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo). Most recently, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections

110(a)(1) and (2)" on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2) and address the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, and to elements of New Hampshire's submittals for the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS which we previously conditionally approved. See 77 FR 63228, October 16, 2012. To the extent that the prevention of significant deterioration (PSD) program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 8-hour ozone NAAQS, will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from New Hampshire that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. Additionally, we are proposing to convert conditional approvals for several infrastructure requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS (See 77 FR 63228, October 16, 2012) to full approval, proposing approval of the statutes submitted by New Hampshire that support the infrastructure SIP submittals, and proposing to conditionally approve certain

aspects of the infrastructure SIP which pertain to the State's PSD program.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of" a new or revised NAAQS. This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that "each such plan" must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP

submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources ("SSM" emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final New Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (See 79 FR 27241 at 27242 - 27245).

**III. What guidance is EPA using to evaluate these SIP submissions?**

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states' development and EPA review of infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo provides additional guidance for certain elements regarding the 2006 PM<sub>2.5</sub> NAAQS, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

**IV. What is the result of EPA's review of these SIP submissions?**

Pursuant to section 110(a), and as noted in the 2011 Memo and the 2013 Memo, states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. NH-DES held public hearings for each infrastructure SIP on the following dates: 2008 Pb - October 3, 2011; 2008 ozone - December 31, 2012; 2010 NO<sub>2</sub> - January 16, 2013; and, 2010 SO<sub>2</sub> - May 24, 2013. New Hampshire received comments from EPA on each of its proposed infrastructure SIPs, and also received comments from the Sierra Club on its proposed SO<sub>2</sub> infrastructure SIP. EPA is also soliciting comment on our evaluation of the state's infrastructure SIP submissions in this notice of proposed rulemaking. New Hampshire provided detailed synopses of how various components of its SIP meet each of the requirements in section 110(a)(2) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, as applicable. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance. The review also evaluates certain infrastructure requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS for which EPA previously issued a conditional approval. (See 77 FR 63228, October 16, 2012).

**A. Section 110(a)(2)(A) - Emission limits and other control measures.**

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.<sup>2</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

New Hampshire's Revised Statutes Annotated (RSA) at Chapter 21-O established the New Hampshire Department of Environmental Services (NH-DES), and RSA Chapter 125-C provides the Commissioner of NH-DES with the authority to develop rules and regulations necessary to meet state and Federal ambient air quality standards. New Hampshire also has SIP-approved provisions for specific pollutants. For example, NH-DES has adopted primary and secondary ambient air quality standards for each of these pollutants in its Chapter Env-A 300 Ambient Air Quality Standards, as follows: for PM<sub>2.5</sub>, Part Env-A 303; for SO<sub>2</sub>, Part Env-A 304; for NO<sub>2</sub>, Part Env-A 306; for ozone, Part Env-A 307; and, for lead, Part Env-A 308. As noted in EPA's approval

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<sup>2</sup> See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964, 67034 (Nov. 12, 2008).



of New Hampshire's Chapter Env-A 300, Ambient Air Quality Standards, on June 24, 2014 (79 FR 35695), New Hampshire's standards are consistent with the current federal NAAQS. Therefore, EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. In addition, we previously issued a conditional approval for New Hampshire's infrastructure SIP submittal made for the 1997 and 2006 PM<sub>2.5</sub> NAAQS because portions of Env-A 300 were outdated. (See 77 FR 63228, October 16, 2012). However, as noted in our June 24, 2014 action mentioned above, New Hampshire has revised their standards and they are now consistent with the federal NAAQS. In light of this, we propose to convert the conditional approval for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS (See 77 FR 63228, October 16, 2012) to full approval. As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

**B. Section 110(a)(2)(B) - Ambient air quality monitoring/data system.**

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors,

collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

NH-DES continues to operate a monitoring network, and EPA approved the state's most recent Annual Air Monitoring Network Plan for Pb, ozone, NO<sub>2</sub>, and SO<sub>2</sub> on October 10, 2014. Furthermore, NH-DES populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that NH-DES has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**C. Section 110(a)(2)(C) - Program for enforcement of control measures and for construction or modification of stationary sources**

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160 - 169B) addresses PSD, while part D of the CAA (sections 171 - 193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and, (iii) permitting program for minor sources and minor modifications. A discussion of GHG permitting and the "Tailoring Rule"<sup>3</sup> is included within our evaluation of the PSD provisions of New Hampshire's submittals.

#### i. Sub-element 1: Enforcement of SIP measures

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<sup>3</sup> In EPA's April 28, 2011 proposed rulemaking for several states' infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (See 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for several infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (See 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

NH-DES staffs and implements an enforcement program pursuant to RSA Chapter 125-C: Air Pollution Control, of the New Hampshire Statutes. Specifically, RSA Chapter 125-C:15, Enforcement, authorizes the Commissioner of the NH-DES or the authorized representative of the Commissioner, upon finding a violation of Chapter 125-C has occurred, to issue a notice of violation or an order of abatement, and to include within it a schedule for compliance. Additionally, RSA 125-C:15 I-b, II, III, and IV provide for penalties for violations of Chapter 125-C. EPA proposes that New Hampshire has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

ii. Sub-element 2: PSD program for major sources and major modifications.

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. NH-DES's EPA-approved PSD rules, contained at Part Env-A 619, contain provisions that address the majority of the applicable infrastructure SIP requirements related to the 2008

Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. One aspect of New Hampshire's PSD rules relating to notification of neighboring states regarding the issuance of PSD permits, however, has not been fully addressed at this time. However, on April 24, 2015, EPA proposed to conditionally approve a recent update from New Hampshire to address this deficiency. (See 80 FR 22957). Once we have published a final conditional approval for that action, we intend to conditionally approve this aspect of sub-element 2 of the state's infrastructure SIPs as well. Accordingly, we propose to approve the majority of New Hampshire's submittals for this sub-element pertaining to section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, but to conditionally approve the aspect pertaining to provision of notice to neighboring states.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (See 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO<sub>x</sub> as a precursor to ozone (70 FR 71612

at 71679, 71699-71700, November 29, 2005). This requirement was codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including these specific NO<sub>x</sub> as a precursor to ozone provisions, by June 15, 2007 (See 70 FR 71612 at 71683, November 29, 2005).

On November 15, 2012, New Hampshire submitted revisions to its PSD program incorporating the necessary changes regarding NO<sub>x</sub> as a precursor to ozone, consistent with the requirements of the Phase 2 Rule. EPA proposed approval of New Hampshire's SIP revisions with respect to the NSR portion of the Phase 2 Rule on January 21, 2015, (See 80 FR 2860),<sup>4</sup> and we will take final action on those revisions prior to, or in conjunction with, finalizing our action on these infrastructure SIP requirements. Therefore, we are proposing to find that New Hampshire has met this set of requirements of section 110(a)(2)(C) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS regarding the explicit identification of NO<sub>x</sub> as a precursor to ozone, consistent with our Phase 2 Rule.

On May 16, 2008 (See 73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)"

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<sup>4</sup> Note that EPA subsequently proposed a conditional approval of New Hampshire's PSD program due to a lack of a provision requiring notification to neighboring states of the issuance of PSD permits. See 80 FR 22957; April 24, 2015.

(2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub>, unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations. The 2008 NSR Rule also specifies that volatile organic compounds (VOCs) are not considered to be precursors to PM<sub>2.5</sub> in the PSD program, unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i) define "significant" for

PM<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (See 73 FR 28321 at 28341, May 16, 2008).<sup>5</sup>

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability

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<sup>5</sup> EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08-1250). As the subpart 4 provisions apply only to nonattainment areas, the EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, the EPA's approval of New Hampshire's infrastructure SIP as to elements C, D(i)(II), or J with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion. The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.



determinations and in establishing emissions limitations for  $PM_{2.5}$  and  $PM_{10}$  in PSD permits beginning on or after January 1, 2011. 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (See 73 FR 28321 at 28341).

On November 15, 2012, New Hampshire submitted revisions to its PSD program incorporating the necessary changes obligated by the 2008 NSR Rule, including provisions that explicitly identify precursors to  $PM_{2.5}$  and account for  $PM_{2.5}$  and  $PM_{10}$  condensables for applicability determinations and in establishing emissions limitations for  $PM_{2.5}$  and  $PM_{10}$  in PSD permits. EPA's proposed approval of New Hampshire's SIP revision with respect to the 2008 NSR Rule was published on January 21, 2015 (See 80 FR 2860),<sup>6</sup> and we will take final action on these revisions prior to, or in conjunction with, finalizing our action on these infrastructure SIP revisions from New Hampshire.

Therefore, we are proposing that New Hampshire has met this set of requirements of section 110(a)(2)(C) for the 2008 Pb, 2008 ozone, 2010  $NO_2$ , and 2010  $SO_2$  NAAQS regarding the

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<sup>6</sup> Note that EPA subsequently proposed a conditional approval of New Hampshire's PSD program due to a lack of a provision requiring notification to neighboring states of the issuance of PSD permits. See 80 FR 22957; April 24, 2015.

requirements obligated by the 2008 NSR Rule. Additionally, we are also proposing to convert our prior conditional approval for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS (see 77 FR 63228, October 16, 2012) to full approval.

On October 20, 2010, EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). 75 FR 64864. This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including a system of "increments" which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

The 2010 NSR Rule also established a new "major source baseline date" for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of "baseline area" to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 52.21(b)(15)(i).

On November 15, 2012, New Hampshire submitted revisions to its PSD program incorporating the necessary changes obligated by the 2010 NSR Rule, including the increments established by the 2010 NSR Rule for incorporation into the SIP, as well as the revised major source baseline date, trigger date, and baseline area level of significance for PM<sub>2.5</sub>. EPA's proposed approval of New Hampshire's SIP revision with respect to the 2010 NSR Rule was published on January 21, 2015, (See 80 FR 2860),<sup>7</sup> and we will take final action on that submittal prior to, or in conjunction with, finalizing our action on these infrastructure SIP submittals from New Hampshire. Therefore, we are proposing that New Hampshire has met this set of requirements of section 110(a)(2)(C) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS regarding the requirements obligated by the 2010 NSR Rule. Additionally, we are also proposing to convert our prior conditional approval for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS (See 77 FR 63228) to full approval.

With respect to greenhouse gas permitting, EPA's "Tailoring Rule," and element C,<sup>8</sup> EPA interprets the Clean Air Act to

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<sup>7</sup> Note that EPA subsequently proposed a conditional approval of New Hampshire's PSD program due to a lack of a provision requiring notification to neighboring states of the issuance of PSD permits. See 80 FR 22957; April 24, 2015.

<sup>8</sup> In this rulemaking, "element C" refers to section 110(a)(2)(C) of the CAA. References to other "elements" have similar meanings, e.g., element D(i)(II) refers to section 110(a)(2)(D)(i)(II) of the CAA.

require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. New Hampshire has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only

pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g. 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA has determined that New Hampshire's SIP is sufficient to satisfy element C with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved New Hampshire PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy element C. The SIP contains the necessary PSD requirements at this time, and the

application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of New Hampshire's infrastructure SIP as to the requirements of element C.

For the purposes of the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS infrastructure SIPs, EPA reiterates that NSR Reform regulations are not in the scope of these actions. Therefore, we are not taking action on existing NSR Reform regulations for New Hampshire.

In summary, we are proposing to approve the majority of New Hampshire's submittals for this sub-element pertaining to section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>x</sub>, and 2010 SO<sub>2</sub> NAAQS, but to conditionally approve the aspect pertaining to provision of notice to neighboring states. In addition, EPA previously issued a conditional approval to New Hampshire regarding the state's infrastructure submittals for the 1997 and 2006 PM<sub>2.5</sub> NAAQS because the state had not met the requirements of EPA's 2008 and 2010 NSR rules. See 77 FR 63228. Given that we have now proposed approval of New Hampshire's PSD program SIP revision with respect to the 2008 and 2010 NSR rules, we are also proposing to convert the prior conditional

approval for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS (see 77 FR 63228) from conditional approval to approval. Note, however, that our April 24, 2015 notice of proposed rulemaking on New Hampshire's November 15, 2012 submittal proposes a conditional approval of the aspect of the state's permitting program pertaining to providing notification to neighboring states regarding the issuance of PSD permits. Accordingly, we are proposing to conditionally approve the aspect of New Hampshire's 1997 and 2006 PM<sub>2.5</sub> NAAQS infrastructure SIP submittals regarding provision of notification to neighboring states of the issuance of PSD permits.

iii. Sub-element 3: Preconstruction permitting for minor sources and minor modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA approved New Hampshire's minor NSR program on September 22, 1980 (45 FR 62814), and approved updates to the program on August 14, 1992.

(See 57 FR 36606). Since this date, New Hampshire and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

We are proposing to find that New Hampshire has met this set of requirements of Section 110(a)(2)(C) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**D. Section 110(a)(2)(D) - Interstate transport.**

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution that states must address. It covers the following 5 topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the 4 prongs discussed below, 2 of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126



of the Act relating to interstate and international pollution abatement.

i. Sub-element 1: Section 110(a)(2)(D)(i)(I) - Contribute to nonattainment (prong 1) and interfere with maintenance of the NAAQS (prong 2)

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as PM<sub>2.5</sub> or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, although it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other state, EPA anticipates that this would be a rare situation (e.g., sources emitting large quantities of Pb in close proximity to state boundaries). The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to lead can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute

significantly to nonattainment or interfere with maintenance in that state.

New Hampshire's infrastructure SIP submission for the 2008 Pb NAAQS notes that there are no sources of Pb emissions located in close proximity to any of the state's borders with neighboring states. Additionally, New Hampshire's submittal and the emissions data the state collects from its sources indicate that there is no single source of Pb, or group of sources, anywhere within the state that emits enough Pb to cause ambient concentrations to approach the Pb NAAQS. Our review of data within our National Emissions Inventory (NEI) database confirms this, and therefore we propose that New Hampshire has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

In today's rulemaking, EPA is not proposing to approve or disapprove New Hampshire's compliance with section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone, 2010 NO<sub>2</sub> and 2010 SO<sub>2</sub> NAAQS, since New Hampshire's infrastructure SIPs for these NAAQS do not include a submittal with respect to transport for sub-element 1, prongs 1 and 2.

ii. Sub-element 2: Section 110(a)(2)(D)(i)(II) - PSD  
(prong 3)

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state.

EPA notes that New Hampshire has satisfied the majority of the applicable infrastructure SIP PSD requirements for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub> NAAQS, and the 1997 and 2006 PM<sub>2.5</sub> NAAQS, but as detailed in the section of this notice addressing section 110(a)(2)(C), we are conditionally approving one element of the state's PSD program. We note that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

New Hampshire has submitted revisions to its PSD regulations that are consistent with the EPA's requirements contained in the Phase 2 Rule, the 2008 NSR Rule, and the 2010 NSR Rule. EPA proposed approval of a number of these SIP revisions on January 21, 2015, (see 80 FR 2860),<sup>9</sup> and we will take final action on these revisions prior to, or in conjunction with, finalizing our action on these infrastructure

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<sup>9</sup> Note that EPA subsequently proposed a conditional approval of New Hampshire's PSD program due to a lack of a provision requiring notification to neighboring states of the issuance of PSD permits. See 80 FR 22957; April 24, 2015.

requirements. Additionally, we proposed to conditionally approve an aspect of this program relating to providing notification to neighboring states of the issuance of PSD permits within a notice of proposed rulemaking published on April 24, 2015. (See 80 FR 22957). Therefore, in this rulemaking, we are proposing to approve all but one of the applicable infrastructure SIP requirements for this sub-element for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, including the applicable PSD requirements associated with the permitting of GHG emitting sources, and are proposing to conditionally approve the remaining aspect of the state's program relating to notification to neighboring states mentioned above. Furthermore, we are also proposing to convert our prior conditional approval for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS (See 77 FR 63228, October 16, 2012) to an approval, except for the aspect relating to notification to neighboring states for which we are proposing a conditional approval.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

EPA approved New Hampshire's NNSR regulations on July 27, 2001 (66 FR 39104). These regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51. EPA proposes that New Hampshire has met the requirements with respect to the prohibition of interference with a neighboring state's PSD program for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS related to section 110(a)(2)(D)(i)(II).

iii. Sub-element 3: Section 110(a)(2)(D)(i)(II) -  
Visibility protection (prong 4)

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

New Hampshire's Regional Haze SIP was approved by EPA on August 22, 2012 (See 77 FR 50602). Accordingly, EPA proposes that New Hampshire has met the visibility protection

requirements of 110(a)(2)(D)(i)(II) for the 2008 Pb NAAQS, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

iv. Sub-element 4: Section 110(a)(2)(D)(ii) - Interstate pollution abatement.

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 relating to interstate pollution abatement.

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

As mentioned elsewhere in this notice, in a separate action we are proposing to conditionally approve one element of New Hampshire's PSD program pertaining to notification to neighboring states of the issuance of PSD permits. Therefore, we propose to also conditionally approve New Hampshire's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and

2010 SO<sub>2</sub> NAAQS. New Hampshire has no obligations under any other provision of section 126.<sup>10</sup>

v. Sub-element 5: Section 110(a)(2)(D)(ii) -  
International pollution abatement.

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. New Hampshire does not have any pending obligations under section 115 for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, or 2010 SO<sub>2</sub> NAAQS. Therefore, EPA is proposing that New Hampshire has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**E. Section 110(a)(2)(E) - Adequate resources.**

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry

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<sup>10</sup> By letter dated August 22, 2013, EPA received a petition from the town of Eliot, Maine, requesting that, pursuant to Section 126 of the CAA, a coal fired electric utility in New Hampshire be required to lower its SO<sub>2</sub> emissions. As of this time, EPA is currently evaluating the merits of this petition.

out its SIP, and related issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This sub-element, however, is inapplicable to this action, because New Hampshire does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.

New Hampshire, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. New Hampshire RSA 125-C:6, Powers and Duties of the Commissioner, authorizes the Commissioner of the NH-DES to enforce the state's air laws, establish a permit program, accept and administer grants, and exercise incidental powers necessary to carry out the law. Additionally, RSA-125-C:12, Administrative Requirements,



authorizes the Commissioner to collect fees to recover the costs of reviewing and acting upon permit applications and enforcing the terms of permits issued. The New Hampshire SIP, as originally submitted on January 27, 1972, and subsequently amended, provides additional descriptions of the organizations, staffing, funding and physical resources necessary to carry out the plan. EPA proposes that New Hampshire has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

New Hampshire has made several amendments to its Statutory Authority since its statutes were submitted to EPA for approval in 1972. In its December 31, 2012 infrastructure SIP submittal for ozone, New Hampshire submitted an updated amendment to the statutory authority within Title I: The State and its Government: Chapter 21-O:11 Department of Environmental Services, Air Resources Council. Additionally, within its September 13, 2013 infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS, New Hampshire included updated amendments to its statutory authority within Title X: Public Health, Chapter 125: Air Pollution Control, for incorporation into the SIP, although it later withdrew section 125-C:15, Enforcement, within a May 21, 2015 letter to EPA. The amendments we are proposing to approve are included in the following table:

Table 1: New Hampshire Statutes Submitted for  
Incorporation into the SIP

<u>Title I: The State and its Government</u>  Chapter 21-O: Department of Environmental Services Section 21-O:11 Air Resources Council Effective September 19, 2010		
<u>Title X: Public Health</u> Chapter 125-C: Air Pollution Control		
Section 125-C:1	Declaration of Policy and Purpose	Effective July 1, 1979
Section 125-C:2	Definitions	Effective July 21, 2010
Section 125-C:4	Rulemaking Authority; Subpoena Power	Effective June 21, 2010
Section 125-C:6	Powers and Duties of the Commissioner	Effective June 21, 2010
Section 125-C:8	Administration of Chapter; Delegation of Duties	Effective July 1, 1996
Section 125-C:9	Authority of the Commissioner in Cases of Emergency	Effective July 1, 1996
Section 125-C:10	Devices Contributing to Air Pollution	Effective August 9, 1996
Section 125-C:10-a	Municipal Waste Combustion Units	Effective January 1, 2006
Section 125-C:11	Permit Required	Effective June 21, 2010
Section 125-C:12	Administrative Requirements.	Effective June 18, 2012
Section 125-C:13	Criteria for Denial; Suspension or Revocation; Modification	Effective June 21, 2010
Section 125-C:14	Rehearings and Appeals	Effective July 1, 1996
Section 125-C:18	Existing Remedies Unimpaired	Effective July 1, 1979
Section 125-	Protection of Powers	Effective July 1, 1996

C:19		
Section 125-C:21	Severability	Effective August 16, 1981
<u>Title X: Public Health</u> Chapter 125-O: Multiple Pollutant Reduction Program		
Section 125-O:1	Findings and Purpose	Effective July 1, 2002
Section 125-O:3	Integrated Power Plant Strategy	Effective January 1, 2013

EPA proposes to approve these statutes into the SIP, and also proposes that upon final approval of these statutes into the SIP, New Hampshire will have demonstrated that it has met the infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

Sub-element 2: State board requirements under section 128 of the CAA.

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) that any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter,

and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Of relevance within New Hampshire, RSA 21-0:11, Air Resources Council, establishes the New Hampshire Air Resources Council, a state board that has the authority to hear enforcement and permit appeals. The Council consists of 11 members, 6 of whom must represent the public interest. Those representing the public interest "may not derive any significant portion of their income from persons subject to permits or enforcement orders, and may not serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders." New Hampshire RSA 21-0:11 further provides that "[a]ll potential conflicts of interest shall be adequately disclosed."

EPA's review of New Hampshire's infrastructure SIP submissions has raised one issue that warrants further evaluation. Section 128(a)(2) requires that a state's SIP provide for adequate disclosure of conflicts of interest by "members of such board or body or the head of an executive agency with similar powers." The use of the disjunctive "or" between "board or body" and "head of an executive agency" results in ambiguity concerning whether merely one or both of

these parties must disclose conflicts of interest, and if it is only one of these entities, which one? This ambiguity is relevant in the case of the submission from New Hampshire because under state law included within such submission, only the members of the Air Resources Council are required to disclose conflicts of interest, not the head of the executive agency. In order to determine whether this is sufficient for purposes of meeting the requirements of section 128(a)(2), we have evaluated the statutory language more closely.

First, the term "or" can be interpreted as "one or the other, but not necessarily both," or it can be interpreted as "and." Although the word "or" could be read to mean "and" in some circumstances, we believe that, in this instance, it is appropriate to give the word "or" its most straightforward meaning. In isolation, it could seem unreasonable to give "or" the first meaning, as that would allow a state to require adequate disclosure of conflict of interest by either the members of the state board or the head of an agency, without regard to whether that disclosure requirement applies to the entity that makes the final permit or enforcement order decision. To read section 128(a)(2) to require disclosure by the entity that is not the actual final decisionmaker appears logically inconsistent and contrary to the overall purposes of section 128. EPA believes that the purpose of section 128(a)(2)

is to assure that conflicts of interest are disclosed by the entity making the permit or enforcement order decision, and requiring this of the ultimate decisionmaker rather than other parties that may be involved in the process.

As discussed above, under New Hampshire law pertaining to the Air Resources Council, "[a]ll potential conflicts of interest shall be adequately disclosed." Under the structure of the State's program, the Commissioner makes certain decisions such as the issuance of air permits and enforcement orders. However, under state law these permits and enforcement orders issued by the Commissioner can be appealed to the Air Resources Council in an adjudicative proceeding. RSA 21-O:11, IV; RSA 21-O:14, I. Given this division of authority in the State, we believe that the Air Resources Council is functionally the final decisionmaker with respect to permits and enforcement orders in New Hampshire, and thus the disclosure of conflicts of interest by members of the Council is necessary to meet the requirements of section 128(a)(2). Naturally, a state may elect to require disclosure of conflicts of interest by other state officials and employees as well, and this would be fully consistent with the explicit reservation of authority for states to impose more stringent requirements than those imposed by section 128.

For the foregoing reasons, the EPA believes that New Hampshire's infrastructure SIP submittals contain provisions

that meet the requirements of section 128(a)(1) and section 128(a). Accordingly, we are proposing approval of the infrastructure SIP submissions as meeting the requirements of section 128.

New Hampshire submitted RSA 21-0:11, Air Resources Council, for incorporation into the SIP on December 31, 2012, and we are proposing to approve it into the New Hampshire SIP. Upon approval of RSA 21-0:11 into the SIP, EPA proposes that New Hampshire has met the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. In addition, EPA previously issued a conditional approval to New Hampshire for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. See 77 FR 63228. This conditional approval occurred prior to New Hampshire's SIP submittal of RSA 21-0:11 to EPA, which occurred on December 31, 2012. Given that New Hampshire has now addressed this issue, we are also proposing to convert the prior conditional approval for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS (see 77 FR 63228) to full approval.

**F. Section 110(a)(2)(F) - Stationary source monitoring system.**

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

New Hampshire RSA 125-C:6, Powers and Duties of the Commissioner, authorizes the Commissioner of NH-DES to require the installation, maintenance, and use of emissions monitoring devices and to require periodic reporting to the Commissioner of the nature and extent of the emissions. This authority also enables the Commissioner to correlate this information to any applicable emissions standard and to make such information available to the public. NH-DES implements Chapter Env-A 800, Testing and Monitoring Procedures, and Chapter Env-A 900, Owner or Operator Recordkeeping and Reporting Obligations, as the primary means of fulfilling these obligations. New Hampshire's Chapters Env-A 800 and 900 have been approved into the SIP (See



77 FR 66388; November 5, 2012). Additionally, under RSA 125-C:6, VII, and Env-A 103.04, emissions data are not considered confidential information. EPA recognizes that New Hampshire routinely collects information on air emissions from its industrial sources and makes this information available to the public. EPA, therefore, proposes that New Hampshire has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**G. Section 110(a)(2)(G) - Emergency powers.**

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an "imminent and substantial endangerment to public health or welfare, or the environment." Section 303 further authorizes the Administrator to issue "such orders as may be necessary to protect public health or welfare or the environment" in the event that "it is not practicable to assure prompt protection ... by commencement of such civil action."

We propose to find that New Hampshire's submittals and certain state statutes provide for authority comparable to that in section 303. New Hampshire's submittals specify that RSA 125-C:9, Authority of the Commissioner in Cases of Emergency, authorizes the Commissioner of NH-DES, with the consent of the Governor and Air Resources Council, to issue an order requiring actions to be taken as the Commissioner deems necessary to address an air pollution emergency. Such orders are effective immediately upon issuance. We note also that RSA 125-C:15, I, provides that, "[u]pon a finding by the commissioner that there is an imminent and substantial endangerment to the public health or welfare or the environment, the commissioner shall issue an order of abatement requiring immediate compliance and said order shall be final and enforceable upon issuance, but may be appealed to the council within 30 days of its issuance, and the council may, after hearing, uphold, modify, or abrogate said order." With regard to the authority to bring suit, RSA 125-C:15, II, further provides that violation of such an order "shall be subject to enforcement by injunction, including mandatory injunction, issued by the superior court upon application of the attorney general."

Furthermore, New Hampshire has broad statutory authority (see RSA 125-C:9, Authority of the Commissioner in Cases of Emergency) to address activities causing imminent and

substantial endangerment to public health; however, New Hampshire does not have regulations that specifically address all the 40 CFR part 51 subpart H requirements. New Hampshire does, however, as a matter of practice, post on the internet daily forecasted ozone levels through the EPA AIRNOW and EPA ENVIROFLASH systems. Information regarding these two systems is available on EPA's website at [www.airnow.gov](http://www.airnow.gov). Notices are sent out to ENVIROFLASH participants when levels are forecast to exceed the current 8-hour ozone standard. In addition, when levels are expected to exceed the ozone standard in New Hampshire, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system. These actions are similar to the notification and communication requirements of 40 CFR 51.152.

Section 110(a)(2)(G) also requires that, for any NAAQS, except lead, New Hampshire have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. See 40 CFR part 51 subpart H. Classifications for all pollutants for AQCRs in New Hampshire can be found at 40 CFR 52.1521. The entire state of New

Hampshire is classified as Priority III for ozone, nitrogen dioxide, and carbon monoxide.

With regard to ozone, however, we note that New Hampshire's December 31, 2012 infrastructure SIP submittal for the 2008 ozone NAAQS contends that it is a Priority I region for ozone, although as mentioned above each AQCR in the state is listed as Priority III for ozone within 40 CFR 52.1521. New Hampshire's submittal cites air quality monitoring data to substantiate its view.

EPA's last update to the priority classifications for New Hampshire occurred in 1972. See 37 FR 10879, May 31, 1972. As noted above, New Hampshire's submittal, and a supplement to that submittal made on May 21, 2015, cite more recent ozone air quality data. This information indicates that the proper ozone classification for the New Hampshire portion of the Merrimack Valley - Southern New Hampshire Interstate AQCR would be Priority I. Therefore, we are proposing to revise New Hampshire's priority classification for the Merrimack Valley - Southern New Hampshire Interstate AQCR from Priority III to Priority I for ozone. This reclassification triggers the contingency plan obligation requirement of 40 CFR 51.151, but New Hampshire's submittal requests, pursuant to 40 CFR 51.152(d)(1), an exemption from the contingency plan obligation because the state is designated as unclassifiable/attainment for

the 2008 ozone standard. In accordance with 40 CFR 51.152(d), we are proposing to grant New Hampshire's request for an exemption from the contingency obligation in light of the state being designated as unclassifiable/attainment for the 2008 ozone NAAQS. See 40 CFR 81.330. Additionally, as documented within the state's submittal, we note that recent air monitoring data have not come close to the significant harm level for ozone of 0.6 parts per million (ppm) on a 2-hour average, and the state has only exceeded 0.1 ppm on three occasions in the 2012-2014 timeframe. See 40 CFR 51.151.

Regarding SO<sub>2</sub>, the Androscoggin Valley Interstate AQCR is classified as Priority IA, the Merrimack Valley-Southern New Hampshire Interstate AQCR is classified as Priority I, and the Central New Hampshire Interstate AQCR is classified as Priority III. However, these classifications were made in 1972 when SO<sub>2</sub> emissions in New Hampshire were significantly higher than they are today. As emission levels change, states are encouraged to periodically evaluate the priority classifications and propose changes to the classifications based on the three most recent years of air quality data. See 40 CFR 51.153.

In its September 13, 2013 infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS, New Hampshire provided air quality data for SO<sub>2</sub> from 2005-2012. New Hampshire supplemented this with more recent data in a letter dated May 21, 2015. In this letter, New

Hampshire requested the entire state be re-classified as Priority III for SO<sub>2</sub> based on the air quality data from 2012-2014. New Hampshire's SO<sub>2</sub> monitoring program is focused on the more populous and more industrial southern portion of the state represented by the Merrimack Valley - Southern New Hampshire area, and there are currently no SO<sub>2</sub> monitors in the more northerly Central New Hampshire Intrastate and Androscoggin Valley Interstate AQCRs. EPA has reviewed the SO<sub>2</sub> monitoring data, which the state has certified, and agrees that the SO<sub>2</sub> levels are significantly below the threshold of a Priority I, IA, or II level.

The Public Service Company of New Hampshire's (PSNH's) Merrimack Station, a large coal-fired electric utility located in Bow, has historically been the largest SO<sub>2</sub> emitter in the Merrimack Valley - Southern New Hampshire AQCR, and also in the state, by a wide margin. By 2012, however, the facility had installed and begun operating an air pollution control device for this pollutant. In 2011, the last year that Merrimack Station's SO<sub>2</sub> emissions were essentially uncontrolled, the facility emitted 22,393 tons of SO<sub>2</sub>. For context, the next largest SO<sub>2</sub> emitter that year in the entire state was PSNH's Schiller Station, which emitted 1,708 tons of SO<sub>2</sub>. The requirement for operation of SO<sub>2</sub> controls at Merrimack Station are contained within Permit TP-0008. This permit was submitted

to EPA and we have approved it into the SIP. See 77 FR 50602, August 22, 2012. Since installation of the control equipment, Merrimack Station's SO<sub>2</sub> emissions have fallen considerably, registering 1,004 tons in 2012, and 1,400 tons in 2013, and 1,044 tons in 2014. The ambient SO<sub>2</sub> air monitoring data submitted by NH-DES within their May 21, 2015 correspondence for the years 2012-2014 have also declined considerably when compared to data recorded for prior time periods.

As mentioned above, New Hampshire's SO<sub>2</sub> monitoring network is focused on the more populous and more industrial southern part of the state represented by the Merrimack Valley - Southern New Hampshire AQCR. Based on our review of the monitoring data for this area, we propose to reclassify the New Hampshire portion of the Merrimack Valley - Southern New Hampshire Interstate AQCR to Priority III for SO<sub>2</sub>. The more northerly AQCRs are much less likely to experience high SO<sub>2</sub> levels due to their lower population and lesser industrial base, and based on the low amounts of SO<sub>2</sub> emitted by sources in these areas. For example, the most recent 3 year cycle emissions inventory data contained within EPA's National Emissions Inventory database is for 2011, and for New Hampshire the data indicate that approximately 95% of the state's SO<sub>2</sub> emissions occur in the counties within the Merrimack Valley - Southern New Hampshire AQCR. Given that the monitoring data in the New Hampshire

portion of the Merrimack Valley - Southern New Hampshire AQCR indicate that the appropriate classification for this region is Priority III, and given that the preponderance of SO<sub>2</sub> emissions occur in this region, we also propose to grant New Hampshire's request that the state's portion of the Androscoggin Valley Interstate AQCR also be reclassified to Priority III for SO<sub>2</sub>. Accordingly, a contingency plan for SO<sub>2</sub> is not required. See 40 CFR 51.152(c).

EPA proposes that New Hampshire has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2008 Pb NAAQS, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

#### **H. Section 110(a)(2)(H) - Future SIP revisions.**

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or an EPA finding that the SIP is substantially inadequate.

New Hampshire RSA 125-C:6, Powers and Duties of the Commissioner, provides that the Commissioner of NH-DES may develop a comprehensive program and provide services for the study, prevention, and abatement of air pollution. Additionally, Chapter Env-A 200, Procedural Rules, which was



approved into the New Hampshire SIP on October 28, 2002 (see 67 FR 65710) provides for public hearings for SIP revision requests prior to their submittal to EPA. EPA proposes that New Hampshire has met the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**I. Section 110(a)(2)(I) - Nonattainment area plan or plan revisions under part D.**

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

**J. Section 110(a)(2)(J) - Consultation with government officials; public notifications; PSD; visibility protection.**

The evaluation of the submissions from New Hampshire with respect to the requirements of CAA section 110(a)(2)(J) are described below.

i. Sub-element 1: Consultation with government officials.

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

New Hampshire RSA 125-C:6 Powers and Duties of the Commissioner, authorizes the Commissioner of NH-DES to advise, consult, and cooperate with the cities, towns, and other agencies of the state and federal government, interstate agencies, and other groups or agencies in matters relating to air quality. Additionally, RSA 125-C:6 enables the Commissioner to coordinate and regulate the air pollution control programs of political subdivisions to plan and implement programs for the control and abatement of air pollution. Furthermore, New Hampshire regulations at Part Env-A 621 direct NH DES to notify town officials, regional planning agencies, and FLMs, among others, of the receipt of certain permit applications and the NH DES' preliminary determination to issue, amend, or deny such permits. Therefore, EPA proposes that New Hampshire has met the infrastructure SIP requirements of this portion of section

110(a)(2)(J) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

ii. Sub-element 2: Public notification.

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

As part of the fulfillment of RSA 125-C:6, Powers and Duties of the Commissioner, New Hampshire issues press releases and posts warnings on its website advising people what they can do to help prevent NAAQS exceedances and avoid adverse health effects on poor air quality days. New Hampshire is also an active partner in EPA's AIRNOW and Enviroflash air quality alert programs. EPA proposes that New Hampshire has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

iii. Sub-element 3: PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. New Hampshire's PSD program in the context of infrastructure SIPs has already been discussed in the

paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Our proposed actions are reiterated below.

New Hampshire's PSD regulations are consistent with the EPA's requirements regarding this sub-element with the exception of the notification to neighboring states provision. Therefore, we are proposing that New Hampshire has met the applicable infrastructure SIP requirements for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS as they relate to the requirements obligated by EPA's PSD regulations, with the exception of the notification to neighboring states provision, for which we are proposing a conditional approval. In addition, EPA previously issued a conditional approval to New Hampshire for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. See 77 FR 63228, October 16, 2012. This conditional approval occurred prior to New Hampshire's submittal of its November 15, 2012 PSD program SIP revision. Given that we have now proposed approval of New Hampshire's SIP revision with respect to the 2008 and 2010 NSR rules, we are also proposing to convert the prior conditional approval for this infrastructure requirement for the 1997 and 2006 PM<sub>2.5</sub> NAAQS to approval. However, in this action we are also proposing to conditionally approve this sub-

element for the 1997 and 2006 PM<sub>2.5</sub> NAAQS with respect to the notification to neighboring states issue previously mentioned.

iv. Sub-element 4: Visibility protection.

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**K. Section 110(a)(2)(K) - Air quality modeling/data.**

To satisfy element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request.

Pursuant to the authority granted to the Commissioner of NH-DES in RSA 125-C:6, New Hampshire reviews the potential impact of major sources consistent with 40 CFR part 51, appendix W, "Guidelines on Air Quality Models." The modeling data are sent to EPA along with the draft major permit. For non-major sources, Part Env-A 606, Air Pollution Dispersion Modeling Impact Analysis Requirements, specifies the air pollution dispersion modeling impact analysis requirements that apply to owners and operators of certain sources and devices in order to demonstrate compliance with the New Hampshire State Implementation Plan, RSA 125-C, RSA 125-I, and any rules adopted thereunder. The state also collaborates with the Ozone Transport Commission (OTC), the Mid-Atlantic Regional Air Management Association, and EPA in order to perform large scale urban airshed modeling. EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**L. Section 110(a)(2)(L) - Permitting fees.**

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

New Hampshire implements and operates the Title V permit program, which EPA approved on September 24, 2001. See 66 FR 48806. Chapter Env-A 700, Permit Fee System, establishes a fee system requiring the payment of fees to cover the costs of: reviewing and acting upon applications for the issuance of, amendment to, modification to, or renewal of a temporary permit, state permit to operate, or Title V operating permit; implementing and enforcing the terms and conditions of these permits; and developing, implementing, and administering the Title V operating permit program. In addition, Part Env-A 705 establishes the emission-based fee program for Title V and non-Title V sources. EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**M. Section 110(a)(2)(M) - Consultation/participation by affected local entities.**

Pursuant to element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP.

As previously mentioned, Chapter Env-A 200, Part Env-A 204 provides a public participation process for all stakeholders that includes a minimum of a 30-day comment period and an

opportunity for public hearing for all SIP-related actions. Additionally, RSA 125-C:6, Powers and Duties of the Commissioner, provides that the Commissioner shall consult with the cities, towns, other agencies of the state and federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality. EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

#### **V. What action is EPA taking?**

EPA is proposing to approve SIP submissions from New Hampshire certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, with the exception of certain aspects relating to PSD which we are proposing to conditionally approve. EPA's proposed actions regarding these infrastructure SIP requirements are contained in Table 2 below.



Table 2: Proposed action on NH infrastructure SIP  
submittals for various NAAQS

Element	2008 Pb	2008 Ozone	2010 NO <sub>2</sub>	2010 SO <sub>2</sub>
(A): Emission limits and other control measures	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A
(C)(i): Enforcement of SIP measures	A	A	A	A
(C)(ii): PSD program for major sources and major modifications	A*	A*	A*	A*
(C)(iii): Permitting program for minor sources and minor modifications	A	A	A	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	A	NS	NS	NS
(D)(i)(II): PSD (prong 3)	A*	A*	A*	A*
(D)(i)(II): Visibility Protection (prong 4)	A	A	A	A
(D)(ii): Interstate Pollution Abatement	A*	A*	A*	A*
(D)(ii): International Pollution Abatement	A	A	A	A
(E)(i): Adequate resources	A	A	A	A
(E)(ii): State boards	A	A	A	A
(E)(iii): Necessary assurances with respect to local agencies	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A
(G): Emergency power	A	A	A	A
(H): Future SIP revisions	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+
(J)(i): Consultation with government officials	A	A	A	A
(J)(ii): Public notification	A	A	A	A
(J)(iii): PSD	A*	A*	A*	A*
(J)(iv): Visibility protection	+	+	+	+
(K): Air quality modeling and data	A	A	A	A
(L): Permitting fees	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A

In the above table, the key is as follows:

A	Approve
A*	Approve, but conditionally approve aspect of PSD program relating to notification to neighboring states
+	Not germane to infrastructure SIPs
NS	No Submittal
NA	Not applicable

Also, with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS, EPA is proposing to approve that New Hampshire has met the infrastructure SIP requirements pertaining to elements (A) and (E) (ii), and the PSD elements (C) (ii), (D) (i) (II) (prong 3), and (J) (iii) for which a conditional approval was previously issued. See 77 FR 63228. As discussed in detail above, New Hampshire has since met the conditions outlined in that action. Furthermore, in keeping with our recently proposed conditional approval of the New Hampshire PSD program with respect to the requirement that neighboring states be notified of the issuance of a PSD permit by New Hampshire DES (80 FR 22957), we are also proposing a conditional approval for elements (C) (ii), (D) (i) (II) (prong 3) and (J) (iii) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, with respect to the requirement to notify neighboring states.

In addition, we are proposing to incorporate into the New Hampshire SIP the following New Hampshire statutes which were

included for approval in New Hampshire's infrastructure SIP  
submittals:

Title I, The State and Its Government, Chapter 21-O: Department  
of Environmental Services, Section 21-O:11, Air Resources  
Council.

Title X Public Health, Chapter 125-C Air Pollution Control,  
Section 125-C:1 - Declaration of Policy and Purpose; Section  
125-C:2 - Definitions; Section 125-C:4 - Rulemaking Authority;  
Subpoena Power; Section 125-C:6 - Powers and Duties of the  
Commissioner; Section 125-C:8 - Administration of Chapter;  
Delegation of Duties; Section 125-C:9 - Authority of the  
Commissioner in Cases of Emergency; Section 125-C:10 - Devices  
Contributing to Air Pollution; Section 125-C:10a - Municipal  
Waste Combustion Units; Section 125-C:11 - Permit Required;  
Section 125-C:12 - Administrative Requirements; Section 125-C:13  
- Criteria for Denial; Suspension or Revocation; Modification;  
Section 125-C:14 - Rehearings and Appeals; Section 125-C:18 -  
Existing Remedies Unimpaired; Section 125-C:19 - Protection of  
Powers; and Section 125-C:21 - Severability.

Title X Public Health, Chapter 125-O: Multiple Pollutant Reduction Program, Section 125-O:1 - Findings and Purpose; and Section 125-O:3 - Integrated Power Plant Strategy.

Additionally, we are proposing to update the 40 CFR 52.1521 classifications for several of New Hampshire's air quality control regions for ozone and sulfur dioxide based on recent air quality monitoring data collected by the state, and to grant the state's request for an exemption from the infrastructure SIP contingency plan obligation for ozone.

As noted in Table 2, we are proposing to conditionally approve one portion of New Hampshire's infrastructure SIP submittals pertaining to the state's PSD program. The outstanding issues with the PSD program concern the lack of a requirement that neighboring states be notified of the issuance of a PSD permit by the New Hampshire Department of Environmental Services. For this reason, EPA is proposing to conditionally approve this portion of New Hampshire's infrastructure SIP revisions for the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and the 1997 and 2006 PM<sub>2.5</sub> NAAQS, consistent with our proposed conditional approval of New Hampshire's PSD program published in the **Federal Register** on April 24, 2015. See 80 FR 22957.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt

specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its PSD program that fully remedies the lack of notification requirement mentioned above. If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements will also be disapproved at that time. In addition, a final disapproval would trigger the Federal Implementation Plan (FIP) requirement under section 110(c). If EPA approves the new submittal, the PSD program and relevant infrastructure SIP elements will be fully approved and replace the conditionally approved program in the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

#### **VI. Incorporation by Reference**

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference into the New Hampshire SIP the statutes identified within Table 1 of this proposal. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **VII. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on



tribal governments or preempt tribal law as specified by  
Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52** Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur Oxides, Reporting and recordkeeping requirements.

Dated: July 1, 2015

H. Curtis Spalding, Regional  
Administrator  
EPA New England

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